

CASES ADJUDGED
IN THE
SUPREME COURT OF THE UNITED STATES
AT
OCTOBER TERM, 1936.

TABER, TREASURER OF PAYNE COUNTY, *v.* IN-
DIAN TERRITORY ILLUMINATING OIL CO.

CERTIORARI TO THE SUPREME COURT OF OKLAHOMA.

No. 280. Argued January 6, 1937.—Decided February 1, 1937.

A non-discriminatory state tax, *ad valorem*, on equipment used by a private corporation in operating for oil and gas under a lease to it of restricted Indian allotments, *held* valid, against the claim that it was an unconstitutional burden on a federal instrumentality. P. 3.

177 Okla. 67; 57 P. (2d) 1167, reversed.

CERTIORARI, 299 U. S. 528, to review the affirmance of a judgment against Taber, County Treasurer, in an action by the Oil Company to recover money paid under protest as taxes.

Mr. Leon J. York, with whom *Messrs. Guy L. Horton* and *L. O. Lytle* were on the brief, for petitioner.

Mr. Donald Prentice, with whom *Mr. William P. McGinnis* was on the brief, for respondent.

The application of the doctrine of implied immunity of a federal instrumentality from state taxation should have regard to the circumstances disclosed. While in one aspect the extent of the exemption depends upon the

effect of the tax, still the nature of the instrumentality and the part it plays may not be disregarded, for it may be of such a character that any taxation of it would impose a direct burden upon the functions of government. *Metcalf v. Mitchell*, 269 U. S. 514; *Union Pacific R. Co. v. Peniston*, 18 Wall. 5; *Safe Deposit & Trust Co. v. Virginia*, 280 U. S. 83; *Wright v. Nagle*, 101 U. S. 791.

An agency created and controlled by the Federal Government to enable it to develop restricted Indian land for oil and gas is of such a character, and so intimately connected with the performance of the functions of government, that it is immune from state taxation and the immunity extends to the property used in its operations. *Metcalf v. Mitchell*, 269 U. S. 514; *Gillespie v. Oklahoma*, 257 U. S. 501; *Choctaw, O. & G. R. Co. v. Harrison*, 235 U. S. 292; *Jaybird Mining Co. v. Weir*, 271 U. S. 609; *Indian Territory Oil Co. v. Oklahoma*, 240 U. S. 522; *Large Oil Co. v. Howard*, 248 U. S. 549; *Howard v. Gypsy Oil Co.*, 247 U. S. 503.

The *ad valorem* tax sought to be levied by the State of Oklahoma upon the equipment used by respondent in its operations would impose a direct burden upon the functions of government. *Metcalf v. Mitchell*, 269 U. S. 514; *Burnet v. Jergens Trust*, 288 U. S. 508; *Large Oil Co. v. Howard*, 248 U. S. 549; *Howard v. Gypsy Oil Co.*, 247 U. S. 503.

The immunity of a federal instrumentality from state taxation is not dependent on the amount of the tax, or the extent of the resulting interference, but is absolute. *Fox Film Corp. v. Doyal*, 286 U. S. 123; *Indian Motorcycle Co. v. United States*, 283 U. S. 570; *Trinityfarm Construction Co. v. Grosjean*, 291 U. S. 466; *Metcalf v. Mitchell*, 269 U. S. 514; *Gillespie v. Oklahoma*, 257 U. S. 501.

Distinguishing: *Federal Compress Co. v. McLean*, 291 U. S. 17; *Susquehanna Power Co. v. State Tax Comm'n*, 283 U. S. 291; *Alward v. Johnson*, 282 U. S. 509; *Thomas*

v. Gay, 169 U. S. 264; *Wagoner v. Evans*, 170 U. S. 588; *Baltimore Shipbuilding Co. v. Baltimore*, 195 U. S. 375; *Choctaw, O. & G. R. Co. v. McKey*, 256 U. S. 531; *Indian Territory Oil Co. v. Board of Equalization*, 288 U. S. 325; *Union Pacific R. Co. v. Peniston*, 18 Wall. 5; *Metcalf v. Mitchell*, 269 U. S. 514.

MR. CHIEF JUSTICE HUGHES delivered the opinion of the Court.

The respondent, Indian Territory Illuminating Oil Company, holds an oil and gas lease covering lands of restricted Pawnee Indians. The question relates to the constitutional authority of the State of Oklahoma to tax certain property used by the respondent in its operations as lessee. The Supreme Court of Oklahoma held that the property was not taxable because the lessee was a federal instrumentality and Congress had not consented to its taxation. 177 Okla. 67; 57 P. (2d) 1167. We granted certiorari. October 12, 1936.

The property is described as "one dwelling, portable, one garage, one tool house, engines, pump, water well equipment, tanks, derricks, casing, tubing, rods, pipelines, and one trailer truck, of the aggregate value of \$15,869.23." The tax is an *ad valorem* tax for the year 1933-34. There is no allegation or finding that the tax was discriminatory, the sole contention being that the property was not subject to *ad valorem* taxation because of its use as an adjunct to the production of oil and gas from the leasehold.

Our decisions distinguish between a non-discriminatory tax upon the property of an agent of government and one which imposes a direct burden upon the exertion of governmental powers. In the former case where there is only a remote, if any, influence upon the exercise of governmental functions, we have held that a non-dis-

criminatory *ad valorem* tax is valid, although the property is used in the operations of the governmental agency. This distinction, recognized by Chief Justice Marshall in *McCulloch v. Maryland*, 4 Wheat. 316, 436, was stated and applied after full consideration in *Thomson v. Pacific Railroad*, 9 Wall. 579, 591, and *Railroad Company v. Peniston*, 18 Wall. 5, 31-36. Recent illustrations are found in *Alward v. Johnson*, 282 U. S. 509, 514, where the tax which was sustained was laid upon property used in operating an automotive stage line between points in California under a mail carrier's contract; and in *Tirrell v. Johnston*, 293 U. S. 533, where a tax known as the "gasoline road toll" was held to be payable by a rural mail carrier who delivered the mail by means of his own motor vehicle. See, also, *Thomas v. Gay*, 169 U. S. 264, 273; *Baltimore Shipbuilding Co. v. Baltimore*, 195 U. S. 375, 382; *Choctaw, O. & G. R. Co. v. Mackey*, 256 U. S. 531, 536, 537; *Willcuts v. Bunn*, 282 U. S. 216, 226; *Susquehanna Power Co. v. Tax Commission (No. 1)*, 283 U. S. 291, 294; *Eastern Air Transport v. Tax Commission*, 285 U. S. 147, 153.

In *Indian Territory Illuminating Oil Co. v. Board of Equalization*, 288 U. S. 325, an *ad valorem* tax upon crude oil, held by the company in its storage tanks, was sustained against the claim that the oil was exempt because in its production the taxpayer was operating as an instrumentality of the United States. There the taxpayer relied, as does the state court here, upon the ruling in *Jaybird Mining Co. v. Weir*, 271 U. S. 609, where an *ad valorem* tax upon ores mined under a lease of restricted Indian land and in the bins on that land was held to be invalid. But we pointed out that in the *Jaybird* case the tax "was assessed on the ores in mass; and the royalties and equitable interests of the Indians had not been paid or segregated." *Indian Territory*

Illuminating Oil Co. v. Board of Equalization, supra, p. 327. In those circumstances the tax was regarded as an attempt to tax an agency of the federal government. Emphasizing that distinction, we said in reference to the *Indian Territory Illuminating Oil Company*: "Such immunity as petitioner enjoyed as a governmental instrumentality inhered in its operations as such, and being for the protection of the Government in its function extended no farther than was necessary for that purpose." *Id.*, p. 328.

In that view, the immunity cannot be said to extend to a nondiscriminatory *ad valorem* tax upon the property of the petitioner which is involved in the instant case. The judgment is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

Reversed.

BLAIR v. COMMISSIONER OF INTERNAL
REVENUE.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
SEVENTH CIRCUIT.

No. 247. Argued January 5, 1937.—Decided February 1, 1937.

1. A judgment of the Circuit Court of Appeals holding a beneficiary named in a trust taxable upon trust income notwithstanding assignments previously made by him, and basing this conclusion upon the ground that, under the local law, the trust was a spendthrift trust giving the beneficiary no power to assign,—held inapplicable as *res judicata* in favor of the Government in proceedings to collect taxes from the same person, for subsequent years, the situation having been changed meanwhile by a decision of the state court construing the trust and upholding the assignments. *Tait v. Western Maryland Ry. Co.*, 289 U. S. 620, distinguished. P. 8.
2. Whether a testamentary trust is a spendthrift trust barring the voluntary alienation of his interest by the beneficiary depends